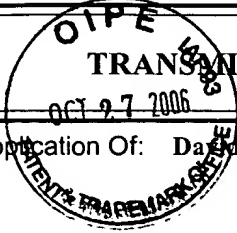
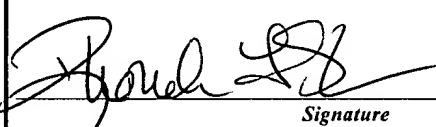
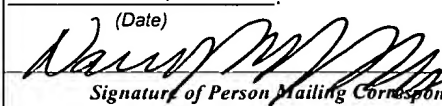


<div style="text-align: center;"><b>TRANSMITTAL OF APPEAL BRIEF (Large Entity)</b></div>					<div style="text-align: right;">Docket No. ITL.03670S</div> <div style="text-align: right;">2623</div>	
In Re Application Of: <b>David B. Kinder, Stanley Mo, and Linda B. Welsh</b>						
Application No. <b>09/575,076</b>	Filing Date <b>May 19, 2000</b>	Examiner <b>Ngoc K. Vu</b>	Customer No. <b>21907</b>	Group Art Unit <b>2623</b>	Confirmation No. <b>1607</b>	
Invention: <b>Web Site Load Management</b>						
<u>COMMISSIONER FOR PATENTS:</u>						
Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on <b>August 28, 2006</b>						
The fee for filing this Appeal Brief is: <b>\$500.00</b>						
<input checked="" type="checkbox"/> A check in the amount of the fee is enclosed.						
<input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account.						
<input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. <b>20-1504</b>						
<input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.						
<b>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</b>						
 _____ Signature			Dated: <b>October 24, 2006</b>			
Rhonda L. Sheldon, Reg. No. 50,457 TROP, PRUNER & HU, P.C. 1616 S. Voss Road, Suite 750 Houston, TX 77057 713/468-8880 [Phone] 713/468-8883 [Fax]			<div style="border: 1px solid black; padding: 5px;"><p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <b>October 24, 2006</b> (Date)</p><p> _____ Signature of Person Mailing Correspondence</p><p><b>Nancy Meshkoff</b> _____ Typed or Printed Name of Person Mailing Correspondence</p></div>			
CC:						



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

David B. Kinder, et al.

Serial No.: 09/575,076

Filed: May 19, 2000

For: Web Site Load Management

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Art Unit: 2623

Examiner: Ngoc K. Vu

Atty Docket: ITL.0367US  
(P8586)

Assignee: Intel Corporation

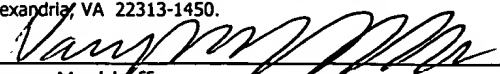
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Alexandria, VA 22313-1450

**APPEAL BRIEF**

10/30/2006 RMEBRAHT 00000049 09575076

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Date of Deposit: October 24, 2006  
I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.  
  
Nancy Meshkoff

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**REAL PARTY IN INTEREST**

The real party in interest is the assignee Intel Corporation.

### **RELATED APPEALS AND INTERFERENCES**

Appeal No. 2004-1444, decision mailed on January 31, 2005, in Application No. 09/574,849.

Appeal Brief filed on July 24, 2006 in Application No. 09/574,851.

## **STATUS OF CLAIMS**

Claim 1 (Rejected).

Claim 2 (Canceled).

Claims 3-11 (Rejected).

Claims 12-13 (Canceled).

Claims 14-26 (Rejected).

Claim 27 (Canceled).

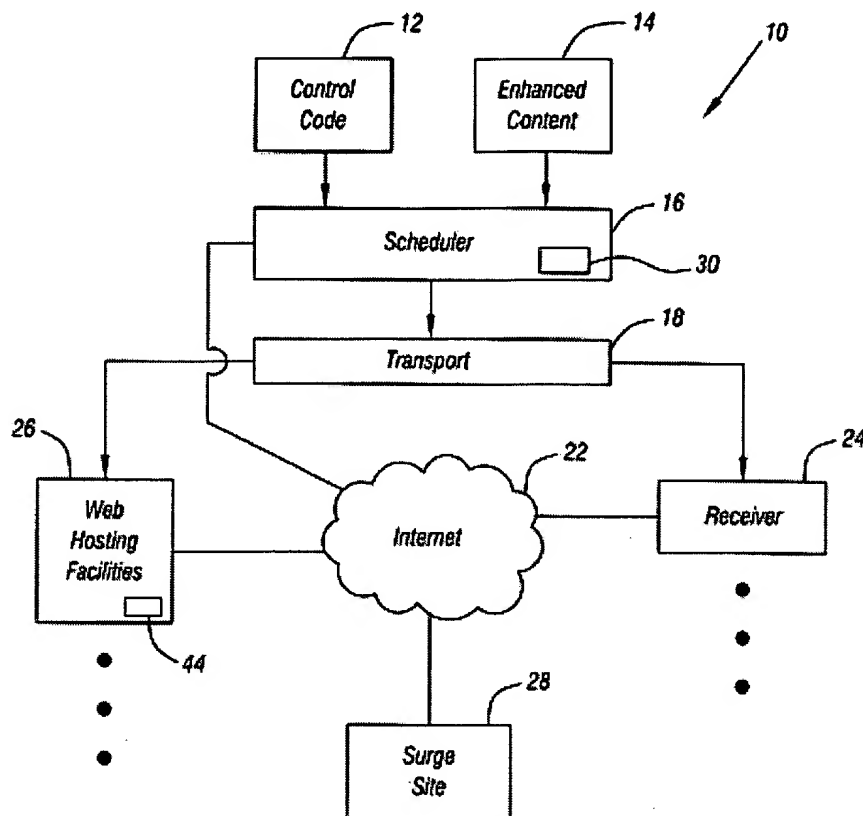
Claims 1, 3-11, and 14-26 are rejected and are the subject of this Appeal Brief.

## **STATUS OF AMENDMENTS**

All amendments have been entered.

## SUMMARY OF CLAIMED SUBJECT MATTER

In the following discussion, the independent claims are read on one of many possible embodiments without limiting the claims:



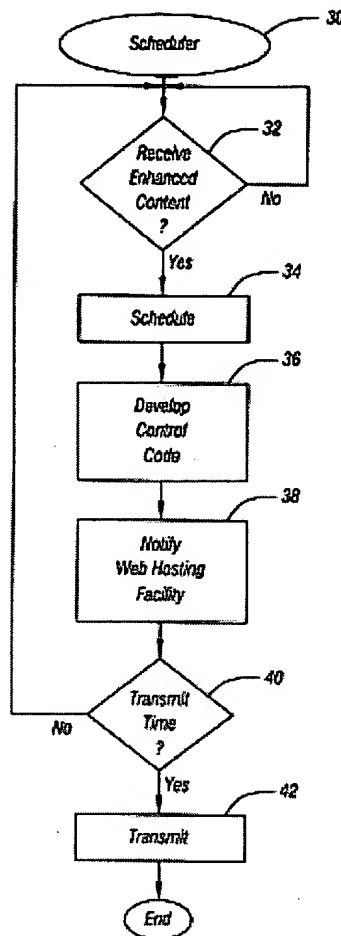
**FIG. 1**

1. A method comprising:

sending, to a web site hosting facility, scheduling information about when a uniform resource locator will be transmitted, sufficiently before video information containing said uniform resource locator is distributed to a receiver of said uniform resource locator and video information to enable the facility to prepare for an increased access load (Figure 1 at 16, 18, 22, 24, and 26; Figure 2 at 30, 32, 34, 36, 38, 40, and 42; Specification at page 6, line 1-page 7, line 22); and

transmitting said video information in the form of television programming to a plurality of receivers and said web site hosting facility (Specification, page 3, line 16-page 5, line 2 and page 7, line 23-page 8, line 2; Figure 1 at 16, 18, 24, and 26).





**FIG. 2**

3. The method of claim 1 wherein sending scheduling information includes sending said scheduling information with said television programming and ancillary data (Figure 2 at 42; Specification at page 8, lines 1-2).

4. The method of claim 1 wherein transmitting television programming includes transmitting said programming with ancillary data over a transport and sending said scheduling information over said transport (Figure 2 at 42; Specification at page 8, lines 1-2).

5. The method of claim 4 further including sending said scheduling information at a different time than said television programming (Specification at page 5, lines 3-26; Figure 2 at 38 and 42).

11. A computer-readable medium storing instructions that, when executed, enable a processor-based system to:

send, to a web site hosting facility, scheduling information about when a uniform resource locator will be transmitted together with video information to a plurality of receivers, sufficiently before said video containing said uniform resource locator is distributed to said receivers to enable the web hosting facility to prepare for a potentially increased access load (Figure 1 at 16, 18, 22, 24, and 26; Figure 2 at 30, 32, 34, 36, 38, 40, and 42; Specification at page 6, line 1-page 7, line 22); and

transmit television programming including said video information to a plurality of receivers, one receiver including the web site hosting facility (Specification, page 3, line 16-page 5, line 2 and page 7, line 23-page 8, line 2; Figure 1 at 16, 18, 24, and 26).

14. The medium of claim 11 further storing instructions that cause a processor-based system to transmit said programming with ancillary data over a transport and send said scheduling information over said transport (Figure 2 at 42; Specification at page 8, lines 1-2).

15. The medium of claim 14 further storing instructions that cause a processor-based system to send said scheduling information at a different time than said television programming (Specification at page 5, lines 3-26; Figure 2 at 38 and 42).

21. A system comprising:  
a video distribution device (Figure 1 at 15; Specification at page 3, line 16-page 4, line 4);

a transport coupled to said video distribution device to distribute video to a plurality of receivers (Figure 1 at 16, 18, and 24; Specification at page 3, line 16-page 4, line 4);  
and

storage coupled to said device, said storage storing instructions that enable said device to send scheduling information to a web site hosting facility sufficiently in advance of video containing a uniform resource locator being distributed to a plurality of receivers to enable the web hosting facility to prepare for a potentially increased access load in response to the distribution of said video (Figure 2 at 38, 42; Specification at page 6, line 23-page 7, line 2), said

web site hosting facility other than said plurality of receivers (Figure 1 at 26 and 24), and said instructions to enable said device to transport said video containing said uniform resource locator to said web site hosting facility and said receivers (Figure 1 at 16, 18, 24, and 26; Figure 2 at 42; Specification at page 4, line 5-page 5, line 26 and page 7, line 23-page 8, line 2).

23. The system of claim 21 including two transports coupled between said video distribution device and said web site hosting facility (Figure 1 at 16, 18, 22, and 26).

24. The system of claim 23 wherein instructions stored on said storage cause said video distribution device to automatically notify the web hosting facility over two different transports when a universal resource locator will be transmitted with said video distributed to said receivers (Figure 1 at 16, 18, 22, and 26; Specification at page 5, lines 9-26).

26. The system of claim 25 wherein said video distribution device transmits programming with ancillary data (Figure 2 at 42; Specification at page 8, lines 1-2).

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

- A. Whether claims 21-26 are indefinite under 35 U.S.C. § 112, second paragraph for failing to point out and distinctly claim the subject matter of the invention.**
- B. Whether claims 1, 3-11, and 14-26 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph.**
- C. Whether claims 1, 3-11, and 14-26 are unpatentable under 35 U.S.C. § 103(a) over Hidary (U.S. Patent No. 5,774,663) in view of Parasnis (U.S. Patent No. 6,728,753).**

## **ARGUMENT**

**A. Are claims 21-26 indefinite under 35 U.S.C. § 112, second paragraph for failing to point out and distinctly claim the subject matter of the invention?**

In the final Office action, claims 21-26 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Specifically, with respect to claim 21, the examiner asserted that it was unclear whether the term “a uniform resource locator” from the limitation “*said video* containing the uniform resource locator” in line 10 and “a uniform resource locator” from the limitation “video containing a uniform resource locator” in line 7 are the same. *See* Paper No. 20060522, page 4. In response thereto, claim 21 was amended. The examiner entered the amendment; however, it was not specified in the Advisory Action (mailed on September 11, 2006) whether the amendment overcame the rejection. Because claim 21 has been amended to make clear that the uniform resource locator is the same, the rejection is believed to have been overcome. If, however, the examiner has not withdrawn the rejection, reversal is requested.

**B. Do claims 1, 3-11, and 14-26 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph?**

Claims 1-11 and 14-26 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Claim 1, for example, recites transmitting video information in the form of television programming to a plurality of receivers and a web site hosting facility. The examiner contests whether the specification supports transmitting video information to a web site hosting facility. It is respectfully submitted that this limitation is supported by the specification.

The written description must be in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. *See, e.g., Moba B.E. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 U.S.P.Q. 2d 1429, 1438 (Fed. Cir. 2003). Support does not have to be express; it may be implicit or inherent. MPEP § 2163. Furthermore, there is no *in haec verba* requirement. *Id.*

In the background section of the disclosure, a circumstance is described where a web server might fail. For example, if a uniform resource locator (URL) is provided in a widely broadcast television advertisement, a large number of viewers may *see* the advertisement at the

same time and they may attempt to simultaneously access the web site. If the number of viewers attempting to access the web server is excessive, the web server may fail, making it impossible for a large number of potential customers to access the desired information. Specification, page 2, lines 3-13.

This problem is especially acute in systems that broadcast television programming together with enhanced content such as URLs. For example, if this type of broadcast is received on a set-top box, viewers may be able to mouse click on the URL to try to immediately access the associated web server. Thus, in this situation, the possibility of web site server failure is even more prominent. Specification at page 2, line 14-page 3, line 3.

From the examples in the background section, it is clear that people *see* or *view* the URLs and the television programming, which may include advertisements. Because the viewers *see* the television programming (and the ancillary data), it is video content or information. In fact, the examiner concedes that video information in the form of television programming is transmitted to a plurality of receivers as the rejection is solely based on the lack of support for receiving video information at a web site hosting facility. Paper No. 20060522, pages 4-5. Thus, there is no question that video may be received at a plurality of receivers.

In an embodiment of the present invention, a web site hosting facility may receive *the same* television programming as the receivers. *See, e.g.*, Specification at page 3, line 16-page 5, line 2. In this way, the web hosting facility may receive a *last* warning that a URL (which may be contained in the television programming) *has been* broadcast to a large number of receivers, and that a large number of attempted accesses to the URL (hosted by the facility) may be *imminent*. *Id.* For example, the specification makes clear that transport 18 may be used to transmit content including television programming, ancillary data, and a control code. Specification, page 3, line 22-page 4, line 8, page 7, line 23-page 8, line 2; Figure 1 at 16, 18, 24, and 26. The content may be transmitted over transport 18 to the web hosting facility 26 and receivers 24. *Id.* *See also* Figure 1. Furthermore, the specification makes clear that transmission of content occurs in response to detecting that the time has come to transmit the content. *Id.* *See also* Figure 2 at 40 and 42. Prior to transmitting the programming, ancillary data, and control code, a web hosting facility may receive a control code with the information about the URL for example over the Internet 22. Specification, page 7, lines 5-22; Figure 2 at 32, 34, 36, and 38.

Thus, in some embodiments, the web hosting facility may receive an earlier notification over the Internet 22 and a later warning via transport 18.

Because the scheduler 16 transmits programming and ancillary data at block 42, and because the transmission may be over transport 18 (to both the web hosting facility and receivers), it would be understood that the statement in the specification that the *same* programming information and ancillary data communicated to the web site hosting facility is the *same* television programming and ancillary data that is transmitted to the receivers. Specification, page 4, lines 19-21. This, in fact, is expressed in the specification: “Thus, the web hosting facility 26 may receive the television programming information. This information may be of use to the web hosting facility as a *last* warning that the ancillary data, including the URL, *has been* broadcast to a large number of receivers. This may also warn the facility 26 that a large number of attempted accesses to a URL, hosted by the facility 26, may be *imminent*.” Specification at page 4, line 19-page 5, line 2.

Clearly, the web hosting facility receives the same television programming information as the receivers, which includes video. The scheduler transmits content at block 42 in Figure 2 and this transmission can be to both the web hosting facility *and* receivers in some embodiments. See Figure 1. That way, the web hosting facility may be warned that the URL “*has been*” broadcast to the receivers and a large number of attempted accesses may be “*imminent*.” Furthermore, if a control code is sent to the web hosting facility through the transport medium 18 with the television programming, the web hosting facility may parse the code from the programming. Specification at page 5, lines 15-26 and page 8, lines 6-15.

There is simply no basis for the examiner’s assertions that the television programming that is provided at the web hosting facility 26 *must* differ from the television programming received at the receivers. The specification does not *explicitly* state that the television programming received at the web site hosting facility *must* be devoid of video content. Because there is no dispute that video information in the form of television programming may be transmitted to the receivers, it is submitted that a reasonable person would understand that the *same* programming that is transmitted to the receivers may also be transmitted to the web hosting facility and therefore that television programming includes video. The specification explicitly states that the web hosting facility receives the *same* programming information and thus it receives television programming information. The specification never indicates that this

television programming information *differs* from the television programming information provided to the receivers. In fact, the specification indicates the opposite; it is the same. Taken together, the examiner's assertions that the information that is received at the web hosting facility 26 is somehow different from the television programming that is received at the receivers is unfounded. There is nothing in the specification that indicates such a thing. Reversal of the rejection is requested.

**C. Are claims 1, 3-11, and 14-26 unpatentable under 35 U.S.C. § 103(a) over Hidary (U.S. Patent No. 5,774,663) in view of Parasnis (U.S. Patent No. 6,728,753)?**

1. Claims 1, 6-11, 16-22, and 25

Independent claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hidary (US 5,774,664) in view of Parasnis et al. (US 6,728,753). Claim 1 recites sending, to a web site hosting facility, scheduling information about when a uniform resource locator will be transmitted, sufficiently before video information containing the uniform resource locator is distributed to a receiver of said uniform resource locator and video information to enable the facility to prepare for an increased access load, and transmitting the video information in the form of television programming to a plurality of receivers and the web hosting facility.

To establish obviousness, all of the limitations of the rejected claim must be taught or suggested by the prior art. *See, e.g.,* MPEP § 2143. Furthermore, there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was claimed by the applicant. *See, e.g., In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q. 2d 1313 (Fed. Cir. 2000). An examiner cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate a claimed invention. *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q. 2d 1780 (Fed. Cir. 1992) ("the mere fact that the prior art may be modified in the manner suggested by the examiner does not make the modification obvious unless the prior art suggested the desirability of the modification"). *Id.* It is respectfully submitted that neither Hidary nor Parasnis, the only prior art cited by the examiner, suggest the modifications proposed by the examiner; the examiner has used hindsight reconstruction to pick and choose among the isolated disclosures to come up with the claims, which is clearly impermissible.



For example, Hidary discloses two preferred embodiments, one shown in Figures 1 and 2 and the other shown in Figure 4. In the preferred embodiment shown in Figures 1 and 2, a uniform resource locator (URL) is embedded in the vertical blanking interval (VBI), therefore no prescheduling of URLs is required. *See, e.g.*, column 5, lines 34-46. In contrast, the embodiment shown in Figure 4 is an alternative embodiment that “does not depend on, or even use the VBI” the need for placing URLs in the VBI is “eliminated.” Column 5, lines 47-50. *See also* column 3, lines 42-55; column 4, lines 22-25.

Because the embodiment shown in Figure 4 of Hidary is distinguished from the embodiments shown in Figures 1 and 2, the embodiment of Figure 4 teaches away from the embodiments shown in Figures 1 and 2. *See In re Gurley*, 27 F.3d 551, 553, 31 U.S.P.Q. 2d 1130 (Fed. Cir. 1994) (“a reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.”) Stated another way, upon a fair reading the Hidary reference, one would be discouraged from embedding a URL in the VBI in connection with Hidary’s embodiment shown in Figure 4. Thus, once it is appreciated that Hidary’s embodiment shown in Figure 4 teaches away from the embodiments shown in Figures 1 and 2, it becomes apparent that the examiner has impermissibly reconstructed the independent claims in hindsight using the claims as a template to pick and choose among the distinct disclosures in Hidary.

For example, in the Office action the server 90 (which is shown in Figure 4) is characterized as disclosing the claimed web hosting facility. Paper No. 20060522, page 5. The server 90 provides URLs to the user’s PC 16 via a direct Internet connection 94. Column 6, lines 36-41. Thus, in this embodiment, URLs are received directly through the Internet 20 by client software 106. Column 8, lines 20-24. The server 90 has nothing to do with the TV broadcast signal 86. *See* Figure 4. Moreover, Hidary makes clear that the embodiment of Figure 4 “*eliminates*” the need for URLs to be distributed with the broadcast content; it “does not depend on, or even use, the VBI.” Column 3, lines 42-55; column 4, lines 21-25; column 5, lines 47-48. Therefore, the examiner’s reliance on another embodiment (*e.g.*, the embodiments shown in Figures 1 and 2) of Hidary as disclosing the transmitting video information that contains a URL to a server is improper. Hidary simply does not teach or suggest transmitting video information (containing a URL) to the server 90. For this reason alone reversal of the rejection is requested.

Even if the two embodiments of Hidary were to be improperly combined, Hidary still would not disclose transmitting video information (containing a URL) to a web hosting facility and to a plurality of receivers. For example, in the embodiment shown in Figure 2, the video signal is sent to the server 24 so that the URL can be stripped out of the VBI. Thereafter, the URL is delivered over the Internet 20 to the user's PC and the video is simultaneously broadcast via transmission means 36. Column 5, lines 34-36. Thus, like the embodiment shown in Figure 4, in the embodiment shown in Figure 2, the URL is delivered separately from the video, over the Internet 20. Furthermore, because the URL is embedded in the video (Figure 2) there is no need to preschedule URL transmission—the video and URL are delivered simultaneously. Column 5, lines 34-46. As there is no prescheduling, a server would not receive a schedule sufficiently before a transmission. So even if there were a suggestion or motivation to combine the disparate teachings of Hidary (which there is not), the combination of these two different embodiments still would not disclose all of the limitations of claim 1.

The examiner concedes that Hidary does not enable a web site hosting facility to prepare for an increased access load. Paper No. 20060522, page 6. There is no reason to modify Hidary's server 90 in view of Parasnis to prepare for an increased access load. First, users 118 do not access Hidary's server 90. Rather, the users 118 retrieve web pages 102 via web site 122. *See* Hidary at Figure 4; column 7, lines 53-59. Thus, the server 90 has nothing to do with users 118 or increased access load.

In contrast, in Parasnis both the laptop computer 1152, from which a PowerPoint presentation is controlled, and a PC attending the PowerPoint presentation are connected to the netshow server 1170. *See, e.g.*, Figure 9. Because Hidary's users 118 do not connect to server 90 in response to receiving a URL it is not clear why one would be motivated to modify Hidary to do so as increased access to server 90 is not a concern. Moreover, Parasnis is limited to presentations using PowerPoint and Explorer program applications. *See* abstract; column 7, lines 33-37. For example, in Parasnis a PowerPoint presentation attendee has to link to the presentation *before* the attendee can participate. *See, e.g.*, column 18, lines 27-43. Thus, the attendee receives the URL before he or she can accept a broadcast. Namely, a PowerPoint presenter invites specific participants to attend his or her presentation via e-mail. The e-mail has the link for the potential attendee to use to attend the presentation. Thus, before the presentation even begins, the presenter has a good idea of how many people he or she will be inviting to

receive the presentation, and potential attendees have to receive and use a link before they can receive the broadcast. This situation is vastly different from Hidary where a broadcast is received first and the URL may or may not be activated thereafter. The users 118 in Hidary do not depend on receiving the URL to be invited to watch a broadcast; rather, they watch a broadcast and may opt to select the URL in the broadcast.

Because Parasnis is so different from Hidary, there is simply no reason to modify Hidary's server 90. The server 90 is not accessed by end users such as the netshow server (Parasnis 1170) and the server 90 has nothing to do with a video broadcast. It is respectfully submitted that the examiner has fallen into the trap of impermissible hindsight reconstruction. The prior art simply does not suggest the desirability of *any* of the modifications proposed by the examiner; hence all of the limitations of the independent claims are not taught or suggested by the prior art. Reversal of each of the rejections is requested.

## 2. Claim 3

Claim 3 depends from claim 1 and recites wherein sending scheduling information includes sending said scheduling information with said television programming and ancillary data. As was explained above in section C1 of this Brief, Hidary does not send scheduling information with television programming and ancillary data.

For example, to reject claim 3, the examiner asserts that Hidary discloses sending a link file with the video. Paper No. 20060522 at page 6. Hidary, however, sends the link file over the Internet 20 and a broadcast separately as broadcast signal 86. *See, e.g.*, Figure 4, column 5, line 65-column 6, line 41. Because the video is not sent with the link file, reversal of the rejection is requested.

## 3. Claims 4, 5, 14, and 15

Claim 4 depends from claim 1 and recites wherein transmitting television programming includes transmitting the programming with ancillary data over a transport and sending scheduling information over the transport.

To reject claim 4, the examiner again improperly combines two embodiments of Hidary that teach away from each other. For example, the examiner cites to the embodiment shown in Figures 1 and 2 as disclosing transmitting that video with embedded URLs over a transport including the Internet and the embodiment shown in Figure 4 as transmitting scheduling information over the Internet.

As was explained above with respect to claim 1, there is no reason to modify the teachings of Hidary as proposed by the examiner because the embodiment of Hidary shown in Figure 4 teaches away from the embodiments shown in Figures 1 and 2. With respect to the embodiment shown in Figure 4, the programming is broadcast at 86 which is independent from the transmission of the URL, which is directly over the Internet. Thus, the embodiment of Hidary shown in Figure 4 does not transmit programming with ancillary data over a transport and sending scheduling information over the transport.

That Hidary does not transmit programming with ancillary data over a transport is evidenced by the examiner's rejection of claim 5 where he concedes that the prescheduled URLs are transmitted to the user at a different time than transmitting the video. *See* Paper No. 20060522 at page 7. Because the examiner concedes that the URLs are prescheduled to be transmitted at a different time than the video is being transmitted, Hidary does not disclose transmitting the programming with the ancillary data over a transport. Accordingly, reversal of the rejection is requested.

4. Claim 23

Claim 23 depends from claim 21 and recites two transports coupled between the video distribution device and the web site hosting facility.

In the Office action, the examiner cites to the Internet 20 and broadcast 86 as coupling the video distribution device and the web site hosting facility 90. Paper No. 20060522 at page 10. Referring to Figure 4, clearly, the broadcast signal 86 does not couple the TV broadcaster to the server 90. Accordingly, the examiner has not established *prima facie* obviousness. Reversal is requested.

5. Claim 24

Claim 24 depends from claim 23 and recites wherein instructions stored on said storage cause said video distribution device to automatically notify the web site hosting facility over two different transports when a uniform resource locator will be transmitted with the video distributed to the receivers.

The examiner has not established obviousness. First, as has previously been argued, the embodiment of Hidary shown in Figure 4 does not transport a uniform resource locator with video. Rather, they are delivered separately to the user. Second, the TV broadcaster

communicates with the web site service 62 via the Internet 20 only. Thus, any notification from the TV broadcaster to the server is over the Internet. Reversal of the rejection is requested.

**6. Claim 26**

Claim 26 is a dependent claim that depends from claim 21 indirectly through claim 25. Claim 26 recites wherein the video distribution device transmits programming with ancillary data.

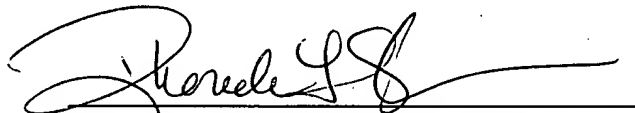
Again, the examiner has not established obviousness. Referring to Figure 4 of Hidary, the TV broadcaster transmits the broadcast over a signal and transmission system 86 and URLs via a direct Internet connection 94. There is no suggestion or motivation to modify this embodiment of Hidary to distribute the broadcast with a URL because Hidary makes very clear that this embodiment is independent from the others that use the vertical blanking interval to encode URLs. The two techniques are mutually exclusive. Therefore, reversal of the rejection is requested.

**Conclusion**

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

Date: October 24, 2006



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Attorneys for Intel Corporation

## **CLAIMS APPENDIX**

The claims on appeal are:

1. A method comprising:  
sending, to a web site hosting facility, scheduling information about when a uniform resource locator will be transmitted, sufficiently before video information containing said uniform resource locator is distributed to a receiver of said uniform resource locator and video information to enable the facility to prepare for an increased access load; and  
transmitting said video information in the form of television programming to a plurality of receivers and said web site hosting facility.
3. The method of claim 1 wherein sending scheduling information includes sending said scheduling information with said television programming and ancillary data.
4. The method of claim 1 wherein transmitting television programming includes transmitting said programming with ancillary data over a transport and sending said scheduling information over said transport.
5. The method of claim 4 further including sending said scheduling information at a different time than said television programming.
6. The method of claim 1 further including sending said scheduling information over a first transport and sending said television programming over a second transport.
7. The method of claim 6 wherein sending said scheduling information includes sending said scheduling information over the Internet and sending said television programming over a broadcast transport.
8. The method of claim 1 including transmitting television programming and ancillary data.

9. The method of claim 8 including automatically sending said scheduling information to said web site hosting facility.

10. The method of claim 9 including automatically sending said scheduling information in two independent ways to said web site hosting facility.

11. A computer-readable medium storing instructions that, when executed, enable a processor-based system to:

send, to a web site hosting facility, scheduling information about when a uniform resource locator will be transmitted together with video information to a plurality of receivers, sufficiently before said video containing said uniform resource locator is distributed to said receivers to enable the web hosting facility to prepare for a potentially increased access load; and

transmit television programming including said video information to a plurality of receivers, one receiver including the web site hosting facility.

14. The medium of claim 11 further storing instructions that cause a processor-based system to transmit said programming with ancillary data over a transport and send said scheduling information over said transport.

15. The medium of claim 14 further storing instructions that cause a processor-based system to send said scheduling information at a different time than said television programming.

16. The medium of claim 11 further storing instructions that cause a processor-based system to send said scheduling information over a first transport and send said television programming over a second transport.

17. The medium of claim 16 further storing instructions that cause a processor-based system to send said scheduling information over the Internet and send said television programming over a broadcast transport.

18. The medium of claim 11 further storing instructions that cause a processor-based system to transmit television programming with ancillary data.

19. The medium of claim 18 further storing instructions that cause a processor-based system to automatically send said scheduling information to said web site hosting facility.

20. The medium of claim 19 further storing instructions that cause a processor-based system to automatically send said scheduling information in two independent ways to said web site hosting facility.

21. A system comprising:  
a video distribution device;  
a transport coupled to said video distribution device to distribute video to a plurality of receivers; and  
storage coupled to said device, said storage storing instructions that enable said device to send scheduling information to a web site hosting facility sufficiently in advance of video containing a uniform resource locator being distributed to a plurality of receivers to enable the web hosting facility to prepare for a potentially increased access load in response to the distribution of said video, said web site hosting facility other than said plurality of receivers, and said instructions to enable said device to transport said video containing said uniform resource locator to said web site hosting facility and said receivers.

22. The system of claim 21 wherein said distribution device is coupled to said web hosting facility through the Internet and instructions stored in said storage cause said device to automatically notify said web site hosting facility over the Internet before video which includes a uniform resource locator is distributed to said receivers.

23. The system of claim 21 including two transports coupled between said video distribution device and said web site hosting facility.



24. The system of claim 23 wherein instructions stored on said storage cause said video distribution device to automatically notify the web hosting facility over two different transports when a universal resource locator will be transmitted with said video distributed to said receivers.

25. The system of claim 21 wherein said video distribution device schedules video programming for distribution to said plurality of receivers.

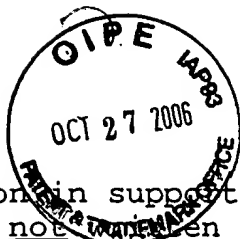
26. The system of claim 25 wherein said video distribution device transmits programming with ancillary data.

## **EVIDENCE APPENDIX**

None.

## **RELATED PROCEEDINGS APPENDIX**

*See* Decision on Appeal No. 2004-1444, mailed on January 31, 2005, in Application No. 09/574,849, on the following pages.



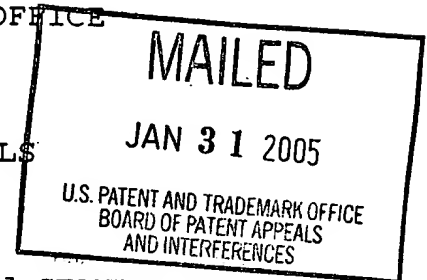
ITL 0374US  
P 8593

The opinion in support of the decision being entered today was not ~~made~~ <sup>written</sup> for publication in a law journal and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES



Ex parte DAVID B KINDER, LINDA B WELSH, and STANLEY MO

Appeal No. 2004-1444  
Application No. 09/574,849

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Trop, Pruner, & Hu, P.C.

ON BRIEF

Before THOMAS, KRASS, and JERRY SMITH, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-29, which constitute all the claims in the application.

Mail Date 1-31-05  
Due Date 3-31-05  
Act. Req. req. for reconsideration  
appeal to Ct. of Appeals

1

TPHD ☒

TPHA ☐

ITLD ☒

Appeal No. 2004-1444  
Application No. 09/574,849

The disclosed invention pertains to a method and apparatus for automatically delaying an access request to a web server in order to prevent overloading the web server.

Representative claim 1 is reproduced as follows:

1. A method comprising:

receiving in a first unit of a processor-based system a request from a second unit of the processor-based system to access a web server;

replying from said first unit to said second unit to said request; and

automatically delaying accessing the web server to prevent overloading the web server.

The examiner relies on the following references:

Phaal	6,006,269	Dec. 21, 1999
Zigmond et al. (Zigmond)	6,330,719	Dec. 11, 2001
		(filed June 30, 1999)
Weber	6,424,993	July 23, 2002
		(filed May 26, 1999)

Claims 1-3, 8, 9, 12-17, 19, 22-25 and 27-29 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Zigmond. Claims 4-7, 10, 11, 18 and 26 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness the examiner offers Zigmond and Phaal with respect to claims 4-7, 10 and 11, and Zigmond and Weber with respect to claims 18 and 26. We note that the examiner's rejections do not include claims 20 and 21. Since claims 20 and 21 include limitations similar to other claims on appeal, we assume that the failure to list claims

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Application No. 09/574,849

20 and 21 in the rejections was an inadvertent oversight by the examiner. We also note that appellants have indicated that claims 20 and 21 are rejected and are on appeal.

Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

#### OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied on by the examiner supports each of the examiner's rejections. Accordingly, we affirm.

We consider first the rejection of claims 1-3, 8, 9, 12-17, 19, 22-25 and 27-29 under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Zigmond. Appellants have indicated that the claims subject to this rejection may be placed in two groups. The first group consists of claims 1, 2, 8, 9,

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12-14, 16, 17, 19, 22-24 and 27-29, and the second group consists of claims 3, 15 and 25 [brief, page 8]. Therefore, we will consider the rejection with respect to claims 1 and 3 only.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how he reads the invention of claim 1 on the disclosure of Zigmond [answer, pages 3-4]. Appellants argue that there is no replying from the request receiving first unit to the request generating second unit in Zigmond. Appellants argue that the portion of Zigmond relied on by the examiner fails to support the examiner's findings of anticipation [brief, pages 8-9]. The examiner responds that a request identifier is returned in response to a queue request in Zigmond [answer, page 10].

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Application No. 09/574,849

We will sustain the examiner's rejection of independent claim 1 and of the other claims grouped therewith. Although the examiner's rejection and the portions of Zigmond relied on by the examiner are not as clear as they could be, we agree with the examiner that Zigmond discloses the claimed invention. We find that browser 301 of Zigmond sends a request to page 305 which includes information about a web page including accessing delays. Script 306 and deferrer object 302 receive this request and, if a delay is required, the information is returned to browser 301 and stored in queue so that the access can be delayed and overloading of the web server can be avoided. Thus, the browser in Zigmond requests access to a web server from script 306 and deferrer object 302, and these units generate a reply to the browser by placing a response in the queue. We find that this operation of Zigmond fully meets the invention as broadly recited in claim 1.

With respect to separately argued claim 3, appellants argue that nothing within the portion of Zigmond cited by the examiner has anything to do with a uniform resource locator (URL) that includes delay information within the URL itself [brief, pages 9-10]. The examiner responds that the URL disclosed in Zigmond includes a delay instruction (deferred) indicating that the server should be delayed as claimed [answer, page 11].



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Application No. 09/574,849

We will sustain the examiner's rejection of claims 3, 15 and 25. We agree with the examiner that Zigmond discloses receiving a URL which includes instructions (deferred?) indicating that access to the server should be delayed.

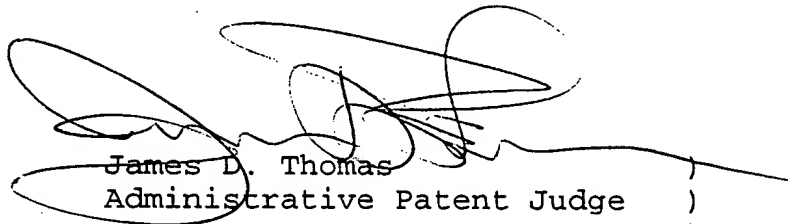
We now consider the rejection of claims 4-7, 10, 11, 18 and 26 under 35 U.S.C. § 103(a). In our view, the examiner's findings and analysis in support of this rejection are sufficient to have established a prima facie case of obviousness. Appellants have not made any arguments directed to this rejection. In fact, appellants have indicated that these claims should stand or fall with the claims rejected under 35 U.S.C. § 102. Since the examiner has established a prima facie case of the obviousness of these claims, and since appellants have offered no arguments in rebuttal, we sustain the examiner's rejection of these claims.


In summary, we have sustained each of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-29 is affirmed.


Appeal No. 2004-1444  
Application No. 09/574,849

No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED

  
James D. Thomas  
Administrative Patent Judge )

  
Errol A. Krass  
Administrative Patent Judge )

  
Jerry Smith  
Administrative Patent Judge )

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Appeal No. 2004-1444  
Application No. 09/574,849

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